

File No. 130702

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 09/11/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Victor Young

Date September 6, 2013

Completed by: Victor Young

Date _____

1 [Lease Amendment - Gleneagles Golf Partners, LP - Estimated Annual Income \$40,000]

2
3 **Resolution authorizing the Recreation and Park Department General Manager to enter**
4 **into a first lease amendment with Gleneagles Golf Partners, LP, for the operation of the**
5 **Gleneagles Golf Course in McLaren Park for the period of November 14, 2013, through**
6 **November 13, 2022, for an estimated annual rental income of \$40,000.**

7
8 WHEREAS, The City owns the land and improvements commonly known as the
9 McLaren Park, including the golf course known as Gleneagles Golf Course; and

10 WHEREAS, On November 29, 2004 the City and County of San Francisco (the "City"),
11 acting by and through its Recreation and Park Commission (the "Commission") entered into a
12 9-year lease with Gleneagles Golf Partners, LP (the "Partners") by order of the Commission's
13 Resolution No. 0411-101 for the operation of the 9-hole golf course in McLaren Park
14 ("Gleneagles"); and

15 WHEREAS, The Lease contains a 9-year extension provided that the Partners have
16 completed all capital improvements proposed in the lease and operated the property and
17 business in a satisfactory manner; and,

18 WHEREAS, The Partners have completed over \$250,000 in required capital
19 improvement including;

- 20 (a) Renovations to the clubhouse, kitchen, restrooms and adjacent patio.
 - 21 (b) Reovations to the maintenance building
 - 22 (c) Purchasing course maintenance equipment and 7 golf carts
 - 23 (d) Making extensive fencing repairs and installing a new front gate
- 24
25

1 (e) Performing extensive deferred tree work to eliminate safety hazards, to stem
2 the spread of turf diseases and to bring needed sunlight and air to the
3 playing surfaces; and

4 WHEREAS, In addition to the above required capital improvements, the Partners
5 undertook a \$150,000 greens renovation project in 2010 after the greens at Gleneagles were
6 severely compromised by a variety of turf diseases; and

7 WHEREAS, Gleneagles was rated in the top 20 9-hole courses in the United States by
8 Golf World in 2009; and

9 WHEREAS, The Partners have collaborated with Visitacion Valley Middle School and
10 the Visitacion Valley branch of the San Francisco First Tee program to provide hundreds of
11 students and First Tee participants access to the golf course; and

12 WHEREAS, On June 20, 2013, by Recreation and Park Commission Resolution No.
13 1306-009, on file with the Clerk of the Board of Supervisors in File No.130702, the
14 Commission recommended that the Board of Supervisors approve the Amendment, on file
15 with the Clerk of the Board of Supervisors in File No. 130702 ("Amendment"), between the
16 City and Partners for the lease and operation of the Gleneagles Golf Course for a nine year
17 extension term, and a total term, including the original term of over ten years; and

18 WHEREAS, Pursuant to San Francisco Charter, Article IX, Section 9.118, Subsection
19 (b), the Board of Supervisors must approve the Lease by resolution; now, therefore, be it

20 RESOLVED, That the Board of Supervisors hereby approves and authorizes the
21 execution of the Amendment in substantially the form on file with the Clerk of the Board of
22 Supervisors in File No.130702, for the lease and operation of the Gleneagles Golf Course
23 commencing on November 14, 2013, through November 13, 2022; and be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
25 Manager to enter into additions, amendments, or other modifications to the Lease (including,

1 without limitation, preparation and attachment of, or charges to, any or all of the exhibits) that
2 the General Manager, in consultation with the City Attorney, determines are in the best
3 interest of the City, do not materially decrease the benefits of the Lease to the City, do not
4 materially increase the obligations or liabilities of the City, do not authorize the performance of
5 any activities without pursuing all required regulatory and environmental review and
6 approvals, and are necessary or advisable to complete the transactions which the Lease
7 contemplates and effectuate the purpose and interest of this resolution, such determination to
8 be conclusively evidenced by the executions and delivery by the General Manager of the
9 Lease and any such additions, amendments, or other modifications that that document; and
10 be it

11 FURTHER RESOLVED, That the Board of Supervisors approves, confirms, and ratifies
12 all prior actions taken by the officials, employees, and agents of the City with respect to the
13 Lease, and, be it

14 FURTHER RESOLVED, That within thirty (30) days of the lease amendment being fully
15 executed by all parties, the Recreation and Park Department General Manager shall provide
16 the final lease amendment to the Clerk of the Board for inclusion into the official file (File No.
17 130702).

18
19
20
21
22
23
24
25

Item 2
File 13-0702

Departments:
Recreation and Park Department (RPD)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve the first lease amendment between the City and County of San Francisco, as landlord, on behalf of the Recreation and Park Department (RPD), and Gleneagles Golf Partners, LP, as tenant, for operation of the "Gleneagles" 9-hole golf course in McLaren Park, for a nine-year extended term from November 14, 2013 through November 13, 2022.

Key Points

- Based on a competitive Request for Proposal (RFP) process, the Board of Supervisors approved a lease between the Recreation and Park Department (RPD) and Gleneagles Golf Partners, LP, for management, maintenance and operation of the Gleneagles 9-hole golf course in McLaren Park, for a nine-year term from December 1, 2004 through November 30, 2013.
- The existing lease includes one nine-year option to extend under the provision that the Gleneagles Golf Partners operated the property and business in a satisfactory manner and completed the specified capital improvements at a minimum cost of \$250,000.
- Gleneagles Golf Partners completed the capital improvements at a cost of \$255,089 and also completed a greens renovation project with hard costs of \$137,323 and additional in-kind labor and equipment donations of \$91,500 for a total project cost of \$228,823, for a the total investment in the property to \$483,912 during the initial term of the lease.
- Both the proposed resolution and subject lease provide that this lease extension would extend from November 14, 2013 through November 13, 2022. However, the existing lease actually extends through November 30, 2013. Mr. Tom Hart, Property Manager at RPD, confirms that the proposed resolution and subject lease should extend from December 1, 2013 through November 30, 2022.

Fiscal Impacts

- Under the proposed nine-year lease extension, (a) the base rent would remain at 7% of annual gross revenues realized by the golf course operators, and (b) the participation rent would remain at 2% of annual gross revenues that exceed \$793,954 and 3% of annual gross revenues that exceed \$860,117, both rent amounts are the same as the existing lease.
- Gleneagles Golf Partners is estimated to earn total gross annual revenues of \$4,636,241 during the proposed nine-year term of the extended lease from FY 2013-14 through Fiscal Year 2021-22, which will result in an estimated \$324,537 (based on the annual base rent of 7 % of gross revenues) in rent being paid to RPD through Fiscal Year 2021-22 for the nine-year term of the extended lease.
- No participatory rent is expected under the proposed lease because the gross revenue thresholds are not expected to be met.

Recommendations

- Amend the proposed resolution to correct the dates of the nine-year lease extension term from November 14, 2013 through November 13, 2022 to December 1, 2013 through November 30, 2022.
- Approve the proposed resolution as amended.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of \$1,000,000 or more is subject to approval by the Board of Supervisors.

Background

Based on a competitive Request for Proposal (RFP) process, on November 29, 2004 the Board of Supervisors approved a lease between the City and County of San Francisco, on behalf of the Recreation and Park Department (RPD), as landlord, and Gleneagles Golf Partners, LP, as tenant, for management, maintenance and operation of the Gleneagles 9-hole golf course in McLaren Park, for a nine-year term from December 1, 2004 through November 30, 2013. Under the existing lease, according to Mr. Tom Hart, Property Manager at RPD, Gleneagles Golf Partners is responsible for all ancillary activities connected directly to the management, maintenance and operation of the Gleneagles golf course, including:

- Taking reservations,
- Registering players,
- Collecting greens fees,
- Providing golf instruction,
- Operating a golf shop and driving range,
- Providing building maintenance,
- Providing food and beverage services, and
- Providing maintenance of the golf course.

The existing lease includes one nine-year option to extend under the provision that the Gleneagles Golf Partners operated the property and business in a satisfactory manner and completed the following specified capital improvements at a minimum cost of \$250,000:

- Renovations to the clubhouse, kitchen, restrooms and adjacent patio;
- Renovations to the maintenance building;
- Purchasing course maintenance equipment and 7 golf carts;
- Completing extensive fence repairs and installing a new front gate; and
- Performing extensive deferred tree work to eliminate safety hazards, to stem the spread of turf diseases and to bring needed sunlight and air to the playing surfaces.

According to Mr. Hart, such capital improvements were completed at a cost of \$255,089 by Gleneagles Golf Partners. Mr. Hart notes that Gleneagles Golf Partners also completed a greens renovation project with hard costs of \$137,323 and additional in-kind labor and equipment donations of \$91,500 for a total project cost of \$228,823. This brings the total investment in the property to \$483,912 during the initial term of the lease.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would exercise the one nine-year option under the existing lease and approve a first lease amendment between the City and County of San Francisco, on behalf of the Recreation and Park Department (RPD), as landlord, and Gleneagles Golf Partners, LP, as tenant, for the additional nine-year term from November 14, 2013 through November 13, 2022 for the management, maintenance and operation of the 9-hole Gleneagles Golf Course in McLaren Park by the Gleneagles Golf Partners.

The Budget and Legislative Analyst notes that both the proposed resolution and subject lease provide that this lease would extend from November 14, 2013 through November 13, 2022. However, as noted above, the existing lease actually extends through November 30, 2013. Mr. Hart confirms that the proposed resolution and subject lease should extend from December 1, 2013 through November 30, 2022. Therefore, both the proposed resolution and subject lease should be amended to reflect these correct lease dates.

Table 1 below provides a summary of the major lease extension terms.

Table 1: Summary of Proposed Nine-Year Lease Extension

Term	9 years (December 1, 2013 through November 30, 2022)
Base Rent	7% of annual gross revenues (same as the original lease)
Participation Rent	2% of annual gross revenues that exceed 20% over 2003 totals and 3% that exceed 30% (same as the original lease)
Utilities and services	Tenant Responsibility (same as the original lease)
Options to further extend	None

According to Mr. Hart, the base rent of 7% of annual gross revenues was based on the responses received pursuant to a competitively bid RFP for the Gleneagles Golf Course in 2004. Mr. Hart notes that prior to 2004, the previous operator of the Gleneagles Golf Course paid 6% of annual gross revenues to RPD. Mr. Hart states that the rents paid at Gleneagles Golf Course are not comparable to those paid at other City golf courses as the 9-hole Gleneagles Golf Course at McLaren Park is the only golf course that is entirely maintained by the golf course operator and not by City staff.

The participation rent shown in Table 1 of 2% of annual gross revenues that exceed \$793,954 (20% more than 2003 rent of \$661,628), and 3% of annual gross revenues that exceed \$860,117 (30% more than 2003 of \$661,628) is the same as the existing lease. However, Mr. Hart advises that under the existing lease, Gleneagles Golf Partners has not paid any participation rent to the RPD because the gross revenue thresholds were not met.

FISCAL IMPACTS

Under the proposed nine-year lease extension, the base rent would remain at 7% of annual gross revenues realized by the golf course operators, the same as the existing lease. As shown in Table 2 below, Gleneagles Golf Partners realized total gross revenues of \$4,899,587 and paid RPD total rent of \$342,971 over the nine-year term of the existing lease from FY 2004-05 through FY 2012-13.

**Table 2: Total Revenues of the Gleneagles Golf Course and total Base Rent Paid to RPD
Actuals December 1, 2004 through June 30, 2013**

Fiscal Year	Gross Annual Revenue	RPD Revenue (7% of Annual Gross Revenues)
2004-05	\$338,403	\$23,688
2005-06	672,942	47,106
2006-07	712,113	49,848
2007-08	642,831	44,998
2008-09	662,408	46,369
2009-10	562,949	39,406
2010-11	381,718	26,720
2011-12	483,154	33,821
2012-13	443,071	31,015
Total	\$4,899,587	\$342,971

According to Mr. Hart, all City golf courses have experienced a decrease in revenues since 2009 as the golf industry nationwide realized less revenue during the slower economic times.

As shown in Table 3 below, Gleneagles Golf Partners is estimated to earn total gross annual revenues of \$4,636,241 for the Gleneagles Golf Course during the proposed nine-year term of the extended lease from FY 2013-14 through Fiscal Year 2021-22. Based on the annual base rent of 7 % of gross revenues, this will result in an estimated \$324,537 in rent being paid to RPD for the nine-year term of the extended lease through Fiscal Year 2021-22, which ends on June 30, 2022. However, the proposed nine-year lease extension does not terminate until November 30, 2022 and additional revenues are expected in the last 5 months of the proposed lease extension. Such additional revenues have not yet been estimated by RPD.

Table 3: Estimated Total Revenues of the Gleneagles Golf Course and total Base Rent Paid to RPD for Fiscal Years FY 2013-14 through FY 2021-22

Fiscal Year	Gross Annual Revenue	RPD Revenue (7% of Annual Gross Revenues)
2013-14*	\$456,363	\$31,945
2014-15	470,054	32,904
2015-16	484,156	33,891
2016-17	498,680	34,908
2017-18	513,641	35,955
2018-19	529,050	37,034
2019-20	544,921	38,144
2020-21	561,269	39,289
2021-22**	578,107	40,467
Total	\$4,636,241	\$324,537

*Includes revenue from July 2013 through November 2013 of the existing lease

**FY 2021-22 ends on June 30, 2022 with five months remaining in the proposed lease; as such, additional revenue is expected in the last 5 months of the proposed lease that ends on December 1, 2022.

Mr. Hart reports that no participatory rent is expected under the proposed lease because the gross revenue thresholds are not expected to be met.

RECOMMENDATIONS

1. Amend the proposed resolution to correct the dates of the nine-year lease extension term from November 14, 2013 through November 13, 2022 to December 1, 2013 through November 30, 2022.
2. Approve the proposed resolution as amended.



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

July 3, 2013

Angela Calvillo
Clerk of the Board
1 Dr. Carlton B. Goodlett Place
City Hall, Room 224
San Francisco, CA 94102-4689

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 JUL -8 AM 9:59

Ms. Calvillo:

Please find enclosed four copies of a resolution for consideration by the Board of Supervisors concerning the First Amendment to the Lease between the City and Gleneagles Golf Partners LP along with a copy of Resolution No. 1306-009 confirming action taken by the Recreation and Park Commission.

Should you require additional information please contact Tom Hart of my staff. Tom can be reached at 415.831.2773 or tom.hart@sfgov.org.

Sincerely,

Phillip A. Ginsburg
General Manager

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution No. 1306-009

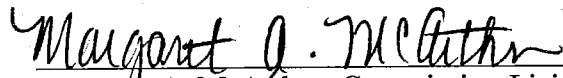
GLENEAGLES GOLF COURSE – MCLAREN PARK
LEASE AMENDMENT

RESOLVED, That this Commission does approve a resolution recommending that the Board of Supervisors approve an amendment to the lease between the City and Gleneagles Golf Partners, LP for the operation of Gleneagles Golf Course in McLaren Park to extend the term by nine years.

Adopted by the following vote:

Ayes	7
Noes	0
Absent	0

I hereby certify that the foregoing resolution was adopted at the Recreation and Park Commission meeting held on June 20, 2013.


Margaret A. McArthur, Commission Liaison

FIRST AMENDMENT TO LEASE
(McLaren Park Golf Course, San Francisco, California)

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is made as of JUNE 6, 2013, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Recreation and Park Commission ("City" or "Landlord"), and GLENEAGLES GOLF PARTNERS, LP, a California limited partnership ("Tenant").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant entered into that certain Recreation and Park Department Lease, dated as of December 1, 2004 (the "Lease"), for the lease of certain land and improvements commonly known as McLaren Park Golf Course or the Gleneagles Golf Course, as more particularly described in Section 1 of the Lease (the "Premises"), for the purpose of managing, maintaining and operating a 9-hole golf course located in McLaren Park in San Francisco, and all ancillary activities connected directly to the promotion and management of such golf course.

B. Unless otherwise referred to in this Amendment, capitalized terms shall have the meanings ascribed to them in the Lease.

C. The Term of the Lease is scheduled to expire on November 13, 2013. The Lease provides Tenant with an option to extend the Term of the Lease for a nine (9) year period, subject to the approval of the Recreation and Park Commission and Board of Supervisors of the City and County of San Francisco, provided that Tenant has successfully completed, to City's satisfaction, the proposed capital improvements described in Section 8.1 of the Lease and has operated the property and the business in a satisfactory manner.

D. During the initial Lease Term Tenant entered into an aggressive project addressing years of deferred maintenance, including performing major tree maintenance that addressed safety issues on the course and opened the greens and fairways to much-needed sunlight. Tenant invested additional funds for interior and exterior improvements to the clubhouse, greens renovations, improvements to cart paths, and new course maintenance equipment and golf carts, exceeding the capital improvement goals set forth in the Lease. Due to Tenant's management of the golf course, Golf World mentioned Gleneagles as one of the top 20 9-hole courses in the United States in 2009, and the course is regularly mentioned in golf publications citing its unique design and quality of play. Further, Tenant has successfully cooperated with The First Tee of San Francisco's satellite location at Visitacion Valley Middle School to offer course time for more advanced students, who play at the course alongside seasoned golfers. Under Tenant's sound management the golf course had gone from being isolated space into a lively and integrated part of McLaren Park and the surrounding neighborhood.

E. Accordingly, the parties presently desire to enter into this Amendment to amend the Lease to (i) extend the term of the Lease for nine (9) years, (ii) update certain standard contractual provisions in the Lease, and (iii) modify the Lease in certain other respects, all on the terms and conditions more particularly set forth below.

NOW THEREFORE, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, City and Tenant agree as follows:

1. Extension of the Term; No Further Option to Extend or Terminate. Effective as of the Effective Date (as defined in Section 14 below) (i) the Term of the Lease is extended through November 13, 2022, (ii) Tenant shall have no further right to extend the term of the Lease under Section 4.6 of the Lease, and (iii) Section 4.7 of the Lease, which gave City a conditional right to terminate the Lease early, is deleted from the Lease. From and after the Effective Date, all references in the Lease and this Amendment to the "Term" or "term" shall refer to the Term as extended hereby.

2. No Use of Semi-Paved Lot Adjacent to Premises. Effective as of the Effective Date, the final two sentences of Section 3.1 (Leased Premises) of the Lease, which refer to Tenant's possible future use of the semi-paved parking lot adjacent to Sunnydale Avenue at the foot of the driveway leading to the course parking lot, shall be deleted.

3. Rent Credit Request Procedures. Effective as of the Effective Date, the provisions of Section 5.8 (Rent Credits) of the Lease shall be deleted and the following provision shall be substituted therefor:

"5.8 Rent Credits. In the event City requires certain improvements to be made to the property following all required environmental review, and Tenant is willing to undertake the implementation of such improvements, Tenant, with prior written approval from the General Manager, may deduct the pre-approved expenses for such improvements as rent credits from the monthly Base Rent payments required hereunder. Further, if Tenant desires to receive rent credit for deferred maintenance work to the golf course, emergency capital repairs to the Improvements or the course, or similar capital improvements, Tenant may request approval of such rent credit in writing from the General Manager, and if the General Manager, in his or her sole discretion (following all required environmental review), approves such work and rent credit in writing, Tenant may deduct the pre-approved expenses for such work as rent credits from the monthly Base Rent payments required hereunder."

4. Reporting Requirement for Taxes and Assessments. Effective as of the Effective Date, Section 6.1(d) of the Lease is deleted and the following provision is substituted therefor:

"6.1(d) Reporting Requirement. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by City to enable City to comply with this requirement."

5. Pesticides Prohibition. Effective as of the Effective Date, Section 7.2(i) of the Lease is deleted and the following provision is substituted therefor:

"7.2(i) Pesticides Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance"), which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with

the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance."

6. Revised General Provisions. Effective as of the Effective Date, Section 24.25, Section 24.27, Section 24.29, and Section 24.34 of the Lease shall be deleted and the following provisions shall be substituted therefor:

"24.25. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City."

"24.27 Tropical Hardwood and Virgin Redwood Ban. Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater."

"24.29 First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Tenant shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Tenant shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development."

"24.34 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in

Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of the each person, entity or committee described above."

7. Additional General Provisions. Effective as of the Effective Date the following provisions shall be added to Section 24 (General Provisions) of the Lease:

"24.36 Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Sections 21.C-4 and 21.C-7, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Individual engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Individuals engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Sections 21.C-4 and 21.C-7.

Tenant agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Sections 21.C-4 and 21.C-7 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, any investigation of noncompliance by Tenant or its Subcontractors. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors."

"24.37 Intellectual Property; Music Broadcasting Rights. Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("ASCAP") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)"

"24.38 Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Tenant, or any subtenant or subcontractor, in which such applicant would

have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any subtenant or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Tenant, or any subtenant or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Tenant, or any of its subtenants or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Tenant shall comply, and cause its subtenant and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Tenant shall provide, or cause its subtenants or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Tenant shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy."

"24.39 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense."

"24.40 Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative.

Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater."

"24.42 Resource Efficiency. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections."

"24.43 Food Service Waste Reduction Requirements. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, without limiting City's other rights and remedies, Tenant agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision."

"24.44 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease."

"24.45 Sustainable Foods. Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Tenant shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Tenant to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Tenant shall also provide an annual report on each anniversary date of this Lease outlining how Tenant incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Tenant informed customers and the youth employed by the Tenant, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced."

8. **No Joint Venture**. This Amendment or any activity by City hereunder does not create a partnership or joint venture between City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by City of any activity conducted by Tenant, and City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

9. **Attorneys Fees**. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. **References**. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

11. **No Third Party Beneficiaries.** This Amendment shall not be deemed to confer any rights or benefits on any party other than the parties to the Lease.

12. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

13. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

14. **Effective Date.** This Amendment shall become effective as on the date (the "Effective Date") upon which (i) the Board of Supervisors passes a resolution approving this Lease, and the Mayor signs such resolution, and (ii) this Amendment is duly executed and exchanged by the parties hereto.

15. **Cooperative Drafting.** This Amendment has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Amendment reviewed and revised by legal counsel. No party shall be considered the drafter of this Amendment, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Amendment.

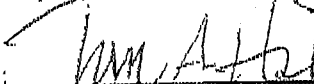
16. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver or relinquishment of any rights or remedies that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: GLENEAGLES GOLF PARTNERS, LP,
a California limited partnership

By: TwoHsieh, LLC, a California limited liability
company, Its General Partner

By: 
Tom Hsieh
Its Manager

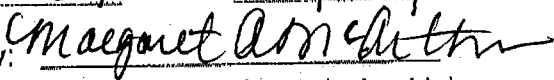
LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
RECREATION AND PARK COMMISSION

APPROVED BY:

RECREATION AND PARK COMMISSION

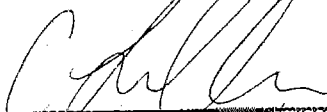
PURSUANT TO RESOLUTION NO.

1306-009, DATED: 6/20/13

By: 
Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Anita L. Wood, Charles Sullivan
Deputy City Attorney

LEASE

between

**CITY AND COUNTY OF SAN FRANCISCO,
as Landlord**

and

**GLENEAGLES GOLF PARTNERS, LP,
as Tenant**

For the lease of

**McLAREN PARK GOLF COURSE
San Francisco, California**

December 1, 2004

Table of Contents

1.	BASIC LEASE INFORMATION	6
2.	DEFINITIONS.....	7
3.	PREMISES.....	13
3.1	LEASED PREMISES.	13
3.2	RIGHTS RESERVED TO CITY.	13
3.3	SUBJECT TO PUBLIC AND MUNICIPAL USES AND RULES.....	14
3.4	AS IS CONDITION OF PREMISES.	15
4.	TERM.....	15
4.1	TERM OF LEASE.	15
4.2	COMMENCEMENT DATE AND EXPIRATION DATE.	16
4.3	DELAY IN DELIVERY OF POSSESSION.	16
4.4	DELAYS CAUSED BY TENANT.	16
4.5	EFFECTIVE DATE.	16
4.6	OPTION TERM.	16
4.7	CITY'S RIGHT OF EARLY TERMINATION.	17
5.	RENT.....	17
5.1	BASE RENT.	17
5.2	PARTICIPATION RENT; AGREEMENT TO PAY; DETERMINATION.....	18
5.3	BOOKS AND RECORDS.	18
5.4	AUDIT.....	18
5.5	LATE CHARGE.....	19
5.6	DEFAULT INTEREST.	19
5.7	NET LEASE.	19
5.8	RENT CREDITS.	20
6.	TAXES, ASSESSMENTS AND OTHER EXPENSES.....	20
6.1	TAXES AND ASSESSMENTS, LICENSES, PERMIT FEES AND LIENS.	20
6.2	OTHER EXPENSES.	21
6.3	EVIDENCE OF PAYMENT.....	21
7.	USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES.....	21
7.1	TENANT'S PERMITTED USE.	21
7.2	COVENANTS REGARDING USE.....	21
8.	IMPROVEMENTS.....	24
8.1	PROPOSED IMPROVEMENTS.	24
8.2	CONSTRUCTION OF IMPROVEMENTS.	24
8.3	OWNERSHIP OF IMPROVEMENTS.	25
8.4	TENANT'S PERSONAL PROPERTY.....	25
9.	REPAIRS AND MAINTENANCE.....	25
9.1	TENANT RESPONSIBLE FOR MAINTENANCE AND REPAIR.	26

9.2	UTILITIES	26
9.3	NO RIGHT TO REPAIR AND DEDUCT	27
10.	LIENS	27
11.	COMPLIANCE WITH LAWS	28
11.1	COMPLIANCE WITH LAWS	28
11.2	REGULATORY APPROVALS	28
11.3	COMPLIANCE WITH CITY'S RISK MANAGEMENT REQUIREMENTS	29
11.4	REPORTS	29
12.	FINANCING; ENCUMBRANCES; SUBORDINATION	29
12.1	ENCUMBRANCE OF LANDLORD'S FEE INTEREST	30
12.2	LEASEHOLD ENCUMBRANCES	30
13.	DAMAGE OR DESTRUCTION	30
13.1	DAMAGE OR DESTRUCTION TO THE IMPROVEMENTS	30
13.2	ABATEMENT IN RENT	31
13.3	WAIVER	31
14.	EMINENT DOMAIN	31
14.1	GENERAL	31
14.2	TOTAL TAKING; AUTOMATIC TERMINATION	31
14.3	PARTIAL TAKING; ELECTION TO TERMINATE	31
14.4	RENT; AWARD	32
14.5	PARTIAL TAKING; CONTINUATION OF LEASE	32
14.6	TEMPORARY TAKINGS	32
15.	ASSIGNMENT AND SUBLETTING	33
15.1	RESTRICTION ON ASSIGNMENT AND SUBLETTING	33
15.2	NOTICE OF PROPOSED TRANSFER	33
15.3	LANDLORD'S RESPONSE	33
15.4	SUBLEASE OR RECAPTURE PREMISES	34
15.5	EFFECT OF TRANSFER	35
15.6	ASSUMPTION BY TRANSFEREE	35
15.7	INDEMNITY FOR RELOCATION BENEFITS	36
16.	DEFAULT; REMEDIES	36
16.1	EVENTS OF DEFAULT	36
16.2	REMEDIES	37
16.3	CITY'S RIGHT TO CURE TENANT'S DEFAULTS	38
17.	WAIVER OF CLAIMS; INDEMNIFICATION	38
17.1	WAIVER OF CLAIMS	38
17.2	TENANT'S INDEMNITY	39
18.	INSURANCE	40
18.1	TENANT'S INSURANCE	40
18.2	GENERAL REQUIREMENTS	41
18.3	PROOF OF INSURANCE	42
18.4	REVIEW OF INSURANCE REQUIREMENTS	43
18.5	NO LIMITATION ON INDEMNITIES	43
18.6	LAPSE OF INSURANCE	43
18.7	TENANT'S PERSONAL PROPERTY	43
18.8	CITY'S SELF INSURANCE	43

18.9	WAIVER OF SUBROGATION.....	43
19.	ACCESS BY CITY.....	44
19.1	ACCESS TO PREMISES BY CITY.....	44
19.2	THE DEPARTMENT FACILITIES AND UTILITY INSTALLATIONS.....	45
19.3	ROADWAYS.....	45
19.4	RIGHTS OF PUBLIC.....	45
20.	ESTOPPEL CERTIFICATES.....	45
21.	SURRENDER.....	46
21.1	SURRENDER OF THE PREMISES.....	46
21.2	AUTOMATIC REVERSION.....	46
22.	HAZARDOUS MATERIALS.....	46
22.1	NO HAZARDOUS MATERIALS.....	46
22.2	TENANT'S ENVIRONMENTAL INDEMNITY.....	47
23.	SECURITY DEPOSIT.....	48
24.	GENERAL PROVISIONS.....	48
24.1	NOTICES.....	48
24.2	NO IMPLIED WAIVER.....	49
24.3	AMENDMENTS.....	49
24.4	AUTHORITY.....	49
24.5	JOINT AND SEVERAL OBLIGATIONS.....	50
24.6	INTERPRETATION OF LEASE.....	50
24.7	SUCCESSORS AND ASSIGNS.....	50
24.8	BROKERS.....	50
24.9	SEVERABILITY.....	51
24.10	GOVERNING LAW.....	51
24.11	ENTIRE AGREEMENT.....	51
24.12	ATTORNEYS' FEES.....	51
24.13	HOLDING OVER.....	52
24.14	TIME OF ESSENCE.....	52
24.15	CUMULATIVE REMEDIES.....	52
24.16	SURVIVAL OF INDEMNITIES.....	52
24.17	RELATIONSHIP OF PARTIES.....	52
24.18	TRANSFER BY CITY.....	53
24.19	RECORDING.....	53
24.20	NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS.....	53
24.21	WAGES AND WORKING CONDITIONS.....	53
24.22	NON-DISCRIMINATION IN CITY CONTRACTS AND BENEFITS ORDINANCE.....	53
24.23	NO RELOCATION ASSISTANCE; WAIVER OF CLAIMS.....	54
24.24	MACBRIDE PRINCIPLES - NORTHERN IRELAND.....	55
24.25	CONFLICTS OF INTEREST.....	55
24.26	CHARTER PROVISIONS.....	55
24.27	TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN.....	55
24.28	TOBACCO PRODUCT ADVERTISING PROHIBITION.....	56
24.29	FIRST SOURCE HIRING ORDINANCE.....	56
24.30	SUNSHINE ORDINANCE.....	56
24.31	COUNTERPARTS.....	56
24.32	NO LIGHT, AIR OR VIEW EASEMENT.....	56
24.33	CITY'S INABILITY TO PERFORM.....	57
24.34	NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS.....	57

24.35 VENDING MACHINE/NON-ALCOHOLIC BEVERAGE CONTRACT	57
<u>EXHIBIT A</u> - LEGAL DESCRIPTION OF PREMISES	59
<u>EXHIBIT B</u> - TENANT'S CAPITAL LEASEHOLD IMPROVEMENTS	60

RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of December 1, 2004, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and Gleneagles Golf Partners, LP, a California limited partnership ("Tenant").

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	December 1, 2004
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	Gleneagles Golf Partners, LP
Premises (Section 3.1):	Land and Improvements, if any, located in San Francisco, California, owned by City and under the jurisdiction of its Recreation and Park Department (the "Department"), as more particularly described in Exhibit A attached hereto.
Term (Section 4.1):	Commencement Date: December 1, 2004 Expiration Date: November 30, 2013
Base Rent (Sections 5.1):	7% of monthly Gross Revenues per conditions and incentives set forth herein
Participation Rent (Section 5.2)	2% of annual gross revenues that exceed 20% over 2003 totals (\$661,628) and 3% that exceed 30%
Use (Section 7.1):	The management, maintenance and operation of the 9-hole McLaren Park golf course and all ancillary activities connected directly to the promotion and management of the course.

Security Deposit (Article 23): \$25,000

Notice Address of City (Section 24.1): Recreation and Park Department
Property Management
McLaren Lodge Annex
501 Stanyan Street
San Francisco, California 94117
Attn: Property Management Unit

with a copy to: Office of the City Attorney
City Hall, Room 432
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Amy Brown

Key Contact for City: Tom Hart

Telephone No.: (415) 831-2773

Notice Address of Tenant Section 24.1): Gleneagles Golf Partners, LP
1500 Franklin Street #300
San Francisco, CA 94109

Key Contact for Tenant: Tom A. Hsieh

Telephone No.: (415) 533-7289

Option Term: (Section 4.6) One (1) option period to renew for nine (9) years on the terms and conditions set forth herein

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in Section 6 hereof or otherwise payable by Tenant under this Lease.

"Affiliate of Tenant" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words "control," "controlled" and "controls"

mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Assignment**" has the meaning given in **Section 15.1** hereof.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** and **Section 5.1(a)** hereof.

"**Capital Leasehold Improvements**" means all proposed improvements referenced in **Section 8.1** and **Exhibit B** of this lease and any additional City-approved improvements as provided for in **Exhibit B**.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.2** hereof.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Effective Date**" means the date on which this Agreement becomes effective pursuant to **Section 4.5** hereof.

"Encumber" means create any Encumbrance; **"Encumbrance"** means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"Event of Default" means any one of the events of default described in Section 16.1 hereof.

"General Manager" means the General Manager of the Department.

"Gross Revenues" means all revenues, from whatever source, received by Tenant or its affiliates from the operation of the Premises and from any income-generating activity carried on therein, including, but not limited to, the following: (1) all revenues received from the collection of the greens fees for the use of the golf course; (2) all revenue from pay telephones, vending machines and the selling price of all merchandise, food and beverages sold in, on, about or from the Premises in the ordinary course of business by Tenant; provided, however, that the selling price of any returned merchandise shall be excluded and, with respect to pay telephone revenue and sales of merchandise by vending machines, only the amount of the commission paid to Tenant for and on behalf of the City on account of such sales shall be included; (3) all revenue collected for the rental of any golf-related equipment; and (4) all charges of any character made by Tenant for the rendering of any service or work of any kind conducted in, on, about or from the golf courses or the Premises. Gross Revenues shall not include: (1) Applicable gross revenue taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services; (2) Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, provided such sums are used exclusively to remedy said loss; (3) revenues from golf instruction and lessons; and (4) revenues from a driving range during the initial 9-year term as described in Section 4.1 herein; (5) returned merchandise or uncollectible debts, including credit card backcharges.

"Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant"

pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids. Department has provided to Tenant all reports concerning Hazardous Materials at the Property that Landlord has in its possession.

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or

computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

"Land" means the real property described in **Exhibit A** attached hereto.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Net Operating Income" means all revenues generated from all sources at the course less all of Tenant's actual costs, computed in accordance with generally accepted accounting principles, of operating, maintaining and managing the Premises according to the terms of this Lease, including, without limitation, utilities; ordinary repairs and maintenance; insurance premiums; license fees, taxes and assessments; marketing and advertising expenses; salaries, wages and any other compensation due and payable to the employees or agents of Tenant employed in connection with the operation, maintenance and management of the Premises, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees; costs of merchandise and of food and beverages purchased by Tenant for sale on the Premises; general and administrative expenses and overhead; Rent, fixed expenses, operational equipment, and other similar costs; related to the Premises; and depreciation related to the Capital Leasehold Improvements.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Party" means City or Tenant; **"Parties"** means both City and Tenant.

"Participation Rent" means a sum equal to a percentage of Tenant's Gross Receipts made from or upon the Premises during each calendar month of the Term in the percentage amounts and for the items set forth in the Basic Lease Information.

"Premises" has the meaning given in Section 3.1 hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or Department facilities or any portion thereof.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"Rent" means the Base Rent, as adjusted pursuant to the provisions of Section 5.1, together with any and all Participation Rent and Additional Charges.

"Sublease" has the meaning given in Section 15.1 hereof.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under

this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Tenant's Personal Property" means the personal property of Tenant described in **Section 8.4** hereof.

"Term" means the term of this Lease as determined under **Section 4.1** hereof.

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Section 15** hereof.

"Unmatured Event of Default" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises.

Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property located in the City and County of San Francisco, State of California, more particularly described in the attached **Exhibit A**, together with any and all improvements existing thereon and owned by City as of the date of this Lease (the "Premises"); excluding therefrom and reserving during the Term unto City, its successors and assigns, during the Term the rights described in **Section 3.2** below. Any acreage or square footage stated in this Lease with respect to the Premises or any improvements thereon is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all purposes of this Lease, any such acreage and/or square footage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use or operate the Department facilities, or any portion thereof. Notwithstanding any of the above, Tenant shall not be responsible for the semi-paved lot adjacent to Sunnydale Avenue at the foot of the driveway leading to the course parking lot until such time Tenant wishes to use said lot for facility improvements. At such time, Tenant shall advise City in writing no later than one hundred eighty (180) days in advance of its use of said lot.

3.2 Rights Reserved to City.

Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the Department facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(f) Without limiting the generality of Section 3.2(e) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in Article 19 below.

3.3 Subject to Public and Municipal Uses and Rules.

Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Tenant's rights under this Lease shall be subject and subordinate to City's

use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. Tenant shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time.

3.4 As Is Condition of Premises.

(a) **Inspection of Premises.** Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

4. TERM

4.1 Term of Lease.

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.5** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date.

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.3 Delay in Delivery of Possession.

If City is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Losses resulting therefrom. Tenant waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.4 Delays Caused by Tenant.

Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Commencement Date results from the acts or omissions of Tenant or any of Tenant's Agents, then the Base Rent and Additional Charges payable by Tenant hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.5 Effective Date.

This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, and (ii) the Parties hereto have duly executed and delivered this Lease.

4.6 Option Term.

Either Party shall have the right to extend this Lease for an additional nine (9) - year period by providing the other Party with one hundred eighty (180) days' advance written notice prior to the expiration of the Initial Term set forth in Section 4.1 above; provided, however, that Tenant's right to extend this Lease shall be subject to all necessary approvals of the City and that Tenant has successfully completed, to City's satisfaction, the proposed capital improvements as described in Section 8.1 herein and has operated the property and business in a satisfactory manner. The Parties shall negotiate in good faith any additions, deletions or modifications to the terms and conditions of this Lease for any such extension, provided such negotiations are not a condition to such extension. Any such extension shall be approved by the Recreation and Park Commission and by the Board of Supervisors of the City and County of San Francisco.

4.7 City's Right of Early Termination.

City shall have the one-time right to terminate this Lease (the "Termination Option") after June 1, 2009 upon giving Tenant not less than 180 days prior written notice, which notice shall be unequivocal and set forth the date of the termination. The Termination Option may only be exercised if the City has entered into an agreement with a single operator (the "New Operator") to manage all City-owned golf courses. The New Operator shall be responsible for assuming any contracts entered into by Tenant in the ordinary course of the operation of the Golf Course which extend beyond the termination date and Tenant shall pay to the New Operator any prepaid deposits for events scheduled beyond the term of the Lease. Upon such termination, each party shall be relieved of all obligations accruing after the effective date of the termination.

Within sixty (60) days of the notice of City's intent to terminate as provided for above, Tenant shall submit an itemized statement, together with all supporting documentation, including but not necessarily limited to, copies of receipts of verified expenses directly connected to Capital Leasehold Improvements, excluding any administrative overhead, along with Tenant's request for any Forfeited Profits, as defined below. City shall have sixty (60) days to approve such statement for payment, ask for any additional information, reject certain items (i.e. those without sufficient documentation or items not related to Capital Leasehold Improvements) or revoke the notice of termination.

If City decides to proceed with the Termination Option, on or before the effective date of the termination, and as a condition thereto, City shall pay to Tenant a one-time termination payment equal to the sum of (i) the unamortized Capital Leasehold Improvements made by Tenant, amortized on a straight-line basis, together with an imputed cost of capital equal to 6%, and using the specific completion date(s) of any capital improvements made during the applicable calendar year; and (ii) fifty percent (50%) of the Forfeited Profits. Forfeited Profits for purposes of this Section 4.7 shall equal (a) the net operating income of Tenant from operations at the Property calculated in accordance with GAAP for the 12 calendar months prior to the date Tenant receives written notice that City has elected to exercise the Termination Option, divided by 12, multiplied by (b) the number of calendar months remaining in the Lease, prorated for partial months, and (c) discounted to present value using a discount rate of 6%.

Notwithstanding the foregoing, City shall have no obligation to make any such payment if the Gross Revenues at the Property for the calendar year preceding the termination date are less than the Gross Revenues for the Property for calendar year 2003, increased by the cumulative increase in the Consumer Price Index (1982=100), for all items, San Francisco-Oakland-San Jose for the same period.

5. RENT

5.1 Base Rent.

Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in monthly installments and postmarked or hand delivered on or before the thirtieth (30th) day of the following month for each month of

this Lease at *Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117* (Reference Department lease number), or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be based on the Gross Revenue collected for each day of said fractional month. At the time of paying Base Rent Tenant shall furnish a statement (herein "Base Rent Statement") showing the computation of Base Rent for the period covered by such payment. At the end of each and every calendar year during the initial term of this lease, and option term if applicable, Tenant shall compute an annual statement of earnings and submit to City with any additional payment due. If annual gross revenues exceed \$737,337, Tenant shall pay City an additional 2% of the additional amount between \$737,338 and \$860,050. If annual gross revenues exceed \$860,050, Tenant shall pay 3% of the amount above \$860,050.

5.2 Participation Rent; Agreement to Pay; Determination.

Tenant agrees to pay Participation Rent to City in the percentage amounts and for the items set forth in the Basic Lease Information. Participation Rent shall be determined by Tenant for each calendar year and shall be payable by the thirtieth (30th) day of the month following the end of each calendar year. At the time of paying Participation Rent Tenant shall furnish a statement (herein "Participation Rent Statement") showing the computation of Participation Rent for the period covered by such payment.

5.3 Books and Records.

Tenant agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Tenant utilizes in its business operations. Tenant shall not co-mingle personal funds with business funds. Tenant shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

5.4 Audit.

Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "City representative"), for the purpose of examining said books and records to determine the accuracy of Tenant's earnings from Tenant's business. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within said four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Tenant has understated

its Gross Receipts, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Tenant. If Tenant understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Tenant shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

5.5 Late Charge.

If Tenant fails to pay any Rent by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to 5% of the amount due. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

5.6 Default Interest.

If any Rent is not paid by the date the same is due and payable, postmarked or hand delivered, such unpaid amount shall bear interest from the due date until paid at the rate of one percent (1%) per month. Payment of interest shall not excuse or cure any default by Tenant.

5.7 Net Lease.

This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Participation Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums

required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

5.8 Rent Credits.

In the event the City requires certain improvements to be made to the property and Tenant is willing to undertake the implementation of said improvements, Tenant, with prior approval from the Commission, may deduct the pre-approved expenses as rent credits from monthly Base Rent payments. Such Commission-approved requests shall be made by City to Tenant in writing.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should

Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 Other Expenses.

Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3 Evidence of Payment.

Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1 Tenant's Permitted Use.

Tenant may use the Premises and any Improvements allowed hereunder only for the use specified in the Basic Lease Information, and for no other purpose.

7.2 Covenants Regarding Use.

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Tenant shall protect the Premises and the Department facilities, if any, from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, in any material manner, Tenant shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department facilities at Tenant's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Tenant's sole expense. Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at Landlord's sole cost if the applicable Improvements or Alterations were approved by Landlord in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department facilities and City's interests in the Premises. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) **Covenant to Protect Water Courses.** Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(e) **Covenant Against Dumping; Waste Disposal.** Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Tenant shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(f) **Covenant to Protect Trees or Other Native Vegetation.** Except in connection with normal and customary maintenance practices, Tenant shall not engage in or permit the cutting of trees or any other native vegetation on the Premises. Excluding cases of imminent danger, Tenant shall not engage in or permit the removal or destruction of trees or any other native vegetation on the Premises without the prior written approval of the General Manager.

(g) **No Tree Planting.** Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises without the prior written approval of the General Manager.

(h) **Covenant Against Hunting or Fishing.** Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(i) **Pesticides Prohibition.** Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(j) **Weed Control.** Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of Section 7.2(i) above.

(k) **Maintenance and Use of Roads.** Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads. Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(l) **Covenant Against Burning.** Tenant shall not burn any weeds, debris or other substances on or about the Premises.

(m) **Sewerage System.** Tenant shall maintain at its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Manager of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per said sewerage system.

(m) **Watershed Management Plan.** Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises hereunder.

(n) **Soil Erosion.** Tenant shall not cause any material erosion of soil on or around the Premises. Tenant shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Tenant engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(o) **Operating Covenants.** Tenant shall use the Premises continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without Landlord's prior written consent, which Landlord may give or withhold in its sole discretion. Tenant shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Participation Rent) from its operations on the Premises.

8. IMPROVEMENTS

8.1 Proposed Improvements.

Tenant, as part of its proposal for obtaining the rights to this Lease, set forth specific facility improvements to be made to the Premises to enhance and improve the overall golfing experience. Tenant's plan is outlined in **Exhibit B** to this Lease.

8.2 Construction of Improvements.

Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises that require any type of City permit of any kind, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion; Subject to the General

Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by the General Manger in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to Landlord. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. No material change from the plans and specifications approved by Landlord may be made without Landlord's prior written consent. Landlord and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish Landlord with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 18.2(c).

8.3 Ownership of Improvements.

Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant as part of its facility improvement package, more fully described in Section 8.1 above and Exhibit B attached hereto, pursuant to the terms and limitations of Section 8.2 above shall be Tenant's property during the Term but become City's property after the Expiration Date of this Lease.

8.4 Tenant's Personal Property.

All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 21.1 hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

9. REPAIRS AND MAINTENANCE

9.1 Tenant Responsible for Maintenance and Repair.

Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. Tenant shall maintain in good condition and repair and its expense the existing fence, if any, along or about the property line of the Premises. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

9.2 Utilities.

(a) City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. The Parties agree that any and all utility improvements shall be subject to the provisions of **Section 8.1** and that such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the Department Facilities, if any) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease. Tenant hereby expressly waives any and all claims and rights against Landlord for compensation, damages, payments, offset or termination of this Lease based upon or with respect to any and all losses now or hereafter sustained by Tenant by reason of any failure by Landlord or any other Person to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other Person in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof.

(b) No antennae or telecommunication dish may be installed on the Premises without the advance written approval of Landlord. No such antennae or

telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Landlord. Tenant agrees, at the request of Landlord, to permit Landlord to install, at Landlord's sole cost, transmission equipment for City's emergency or 800 Mhz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Tenant.

(c) At Landlord's request, Tenant shall purchase (i) all of its electricity and gas for the Improvements from the City's utility, Hetchy-Hetchy Water and Power, at then prevailing market rates for comparable types of load so long as it is reasonably available for Tenant's needs, and (ii) all of its phone, telecommunication, and other utility services from the City so long as City is in the business of providing such utility services and City charges its standard rates for such services. Tenant's sole remedy for any failure of the City's utility to deliver such utility services as provided herein shall be to change providers if such failure continues for a period of more than thirty (30) days.

9.3 No Right to Repair and Deduct.

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

Tenant shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and

materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws.

Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary which are applicable to the Property. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements which are applicable to the Property. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section may include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting Section 5.5 hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals.

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental

regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** Tenant further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements.

Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

11.4 Reports.

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Tenant prepares or obtains any report or other informational document relating to the physical condition of the Premises or any Improvements thereon, Tenant shall promptly deliver a copy of such report or document to Landlord.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest.

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

12.2 Leasehold Encumbrances.

Without limiting Article 15 hereof, Tenant shall not Encumber this Lease or Tenant's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1 Damage or Destruction to the Improvements.

In the case of damage to or destruction of the Premises by fire or any other casualty, excepting damage to landscaping and vegetation due to weather conditions, whether insured or uninsured, Tenant shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents or by acts beyond reasonable control of Tenant. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Tenant during the Term hereof, Tenant may, at its option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 8.2 above. However, if Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements built by or on behalf of Tenant as provided above, Tenant shall promptly,

at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of Section 21.1 below.

13.2 Abatement in Rent.

In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable hereunder.

13.3 Waiver.

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. EMINENT DOMAIN

14.1 General.

If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

14.2 Total Taking; Automatic Termination.

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

14.3 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this Article 14 shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

14.4 Rent; Award.

Upon termination of this Lease pursuant to an election under Section 14.3 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 14.5 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.5 Partial Taking; Continuation of Lease.

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 14.3 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.6 Temporary Takings.

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises

during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting.

(a) Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the Commission's prior written consent in each instance, which the Commission may withhold in its reasonable discretion. Any Assignment or Sublease, without the Commission's prior consent, shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to terminate immediately this Lease by sending written notice to Tenant.

(b) Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, 100% of rental income or other consideration received by Tenant which is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

15.2 Notice of Proposed Transfer.

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "Notice of Proposed Transfer") to Landlord of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide the Department with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the Department may reasonably request.

15.3 Landlord's Response.

(a) Within thirty (30) days after Landlord's receipt of the Notice of Proposed Transfer and any such additional information requested by Landlord (the "Response Period"), Landlord may, by written notice to Tenant, elect to: (i) sublease the

portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 15.4**, or (ii) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture"). If Landlord declines to exercise either of the options provided in clauses (i) and (ii) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of Landlord's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to Landlord's prior written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. However, any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Rent payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid one hundred percent (100%) to Landlord, after Tenant has recovered any verifiable, customary and reasonable brokers' commissions and legal fees and the verifiable, customary and reasonable cost of any leasehold improvements that Tenant has actually incurred in connection with such Sublease or Recapture. Tenant shall provide Landlord with such information regarding the proposed Transferee and the proposed Assignment or Sublease as Landlord may reasonably request.

(b) Notwithstanding the foregoing, if following Landlord's decline to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give Landlord a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and Landlord shall again be entitled to elect one of the options provided in clauses (i) and (ii) above at any time within fifteen (15) business days after Landlord's receipt of such new Notice of Proposed Transfer.

(c) In the event Landlord elects either of the options provided in clauses (i) or (ii) above, Landlord shall be entitled, at its sole option, to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

(d) Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies hereunder or at Law or in equity.

15.4 Sublease or Recapture Premises.

If City elects to Sublease or Recapture from Tenant as provided in **Section 15.3**, the following shall apply:

(a) **Sublease.** In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Premises") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

(b) **Recapture.** In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Premises") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all of their rights and obligations hereunder with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such separation.

15.5 Effect of Transfer.

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article shall, at the option of the City in its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

15.6 Assumption by Transferee.

Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Article. However, the failure or refusal of such Transferee to execute such instrument of

assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

15.7 Indemnity for Relocation Benefits.

Without limiting Section 15.6, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16. DEFAULT; REMEDIES

16.1 Events of Default.

Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during any Lease year of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

16.2 Remedies.

Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not

exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this Section 16.2(b) shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

16.3 City's Right to Cure Tenant's Defaults.

If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with ten (10) days prior written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

17. WAIVER OF CLAIMS; INDEMNIFICATION

17.1 Waiver of Claims.

Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes

the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

17.2 Tenant's Indemnity.

Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Tenant, or Tenant's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any

Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

18. INSURANCE

18.1 Tenant's Insurance.

Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) **Property Insurance.** At all times Tenant shall, at its sole cost, keep the Premises and all Improvements thereon insured for the mutual benefit of City and Tenant against:

Loss or damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Tenant from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the Full Insurable Value of the Improvements which are included in the Premises;

Loss or damage by explosion, rupture or bursting of high pressure steam boilers, steam pipes, steam turbines, steam engines or flywheels, air conditioning equipment, pressure vessels, motors or similar apparatus, now or hereafter installed in the Improvements in such limits with respect to any one accident as may be reasonably required by City from time to time but not less than One Million Dollars (\$1,000,000); and

Such other risks in such amounts as City's Risk Manager may reasonably require.

"Full insurable value" shall mean the actual replacement cost of the Improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Tenant and reasonably acceptable to City; provided, however, that City's Risk Manager shall

have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurable value as determined by City shall exceed by at least ten percent (10%) of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

(b) **Comprehensive Insurance.** Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations.

(c) **Public Liability and Other Insurance.** Tenant shall at all times, at its cost, also maintain insurance for the mutual benefit of City and Tenant against:

Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises or the property adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit.

Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against City, Tenant, the Premises or any other City property, not less than \$1,000,000 each accident.

Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Tenant uses automobiles in connection with its use of the Premises.

Business interruption insurance insuring that the Base Rent and Participation Rent shall be paid for a period of up to one year if Tenant is unable to operate its business at the Premises, on an all risk form excluding earthquake and flood but including business interruptions caused by riots and civil commotion. Participation Rent shall be calculated by taking the average of the Participation Rent payments made to Landlord for the twelve (12) months immediately preceding the incident causing the business interruption.

18.2 General Requirements.

All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage (ten (10) days in the case of non-payment of premiums), mailed to the address(es) for City set forth in the Basic Lease Information.

18.3 Proof of Insurance.

Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

18.4 Review of Insurance Requirements.

Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

18.5 No Limitation on Indemnities.

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under Sections 17.2 and 22.3 above, or any of Tenant's other obligations or liabilities under this Lease.

18.6 Lapse of Insurance.

Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

18.7 Tenant's Personal Property.

Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

18.8 City's Self Insurance.

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation.

Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

19. ACCESS BY CITY

19.1 Access to Premises by City.

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 16.3 hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

(d) **No Abatement.** Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) **Minimize Disruption.** City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

19.2 The Department Facilities and Utility Installations.

Without limiting Section 19.1 above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

19.3 Roadways.

City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

19.4 Rights of Public.

Tenant shall keep the Premises open to the public at all times consistent with the uses permitted hereunder.

20. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

21. SURRENDER

21.1 Surrender of the Premises.

Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in the condition received by Tenant, ordinary wear and tear excepted, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, or later upon Landlord's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by Landlord to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.3** above). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations, subject to ordinary wear and tear. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

21.2 Automatic Reversion.

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.3** above.

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials.

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated

or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, provided that Tenant may store and use such substances in the Premises and any Improvements in such limited amounts as are customarily used for (a) general office purposes (such as copy toner and supplies); (b) maintenance and operation of motorized golf carts; (c) greenskeeping and landscaping, provided that such necessary quantities of pesticides and herbicides are stored and used in accordance with Section 7.2(i) of this Lease; (d) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs); (e) operation of vehicles and equipment; (f) any other Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable laws; and (g) janitorial purposes; further provided that such storage and use permitted hereunder shall be at all times in full compliance with all applicable Environmental Laws. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting Section 19 hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

22.2 Tenant's Environmental Indemnity.

If Tenant breaches any of its obligations contained in Section 22.1 above, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in Section 17.2 above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or

abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23. SECURITY DEPOSIT

Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. In lieu of posting a cash deposit, Tenant shall have the continuing right to post an irrevocable sight draft letter of credit in the principal amount designated in Section 1, Basic Lease Information, Security Deposit in form and substance reasonably satisfactory to City.

24. GENERAL PROVISIONS

24.1 Notices.

Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal

by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 24.1 and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

24.2 No Implied Waiver.

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3 Amendments.

Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. The General Manager shall have the full power and authority to enter into any amendment to this Lease that does not (i) decrease the amount of rental income payable by Tenant to Landlord, (ii) materially increase Landlord's liabilities or financial obligations under this Lease, (iii) change the legal description of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

24.4 Authority.

If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon

City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

24.5 Joint and Several Obligations.

The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

24.6 Interpretation of Lease.

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

24.7 Successors and Assigns.

Subject to the provisions of Section 15 hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

24.8 Brokers.

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be

responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 Severability.

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.10 Governing Law.

This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

24.11 Entire Agreement.

This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

24.12 Attorneys' Fees.

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24.13 Holding Over.

Any holding over after the expiration of the Term, excluding the Option Term as defined in Section 4.6, with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Monthly Base Rent equal to the amount set forth in Section 5.1 hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

24.14 Time of Essence.

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.15 Cumulative Remedies.

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.16 Survival of Indemnities.

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

24.17 Relationship of Parties.

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

24.18 Transfer by City.

If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.19 Recording.

Tenant agrees that it shall not record this Lease in the Official Records. Upon request by Tenant, Landlord shall prepare for recordation a memorandum of this Lease which Tenant may record at its own cost.

24.20 Non-Liability of City Officials, Employees and Agents.

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement or otherwise.

24.21 Wages and Working Conditions.

With respect to the construction of any Improvements or Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. Tenant shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

24.22 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) **Subleases and Other Subcontracts.** Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

24.23 No Relocation Assistance; Waiver of Claims.

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws,

including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

24.24 MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.25 Conflicts of Interest.

Tenant states that it is familiar with the provisions of Sections 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the Department of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any member of the Commission, or other officer or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

24.26 Charter Provisions.

This Lease is governed by and subject to the provisions of the City's Charter and Administrative Code.

24.27 Tropical Hardwood and Virgin Redwood Ban.

Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. In the event Tenant fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Tenant acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Tenant from any contract with the City and County of San Francisco.

24.28 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

24.29 First Source Hiring Ordinance.

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco [Real Estate Division of the Department of Administrative Services] adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

24.30 Sunshine Ordinance.

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

24.31 Counterparts.

This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.32 No Light, Air or View Easement.

Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on Landlord.

24.33 City's Inability to Perform.

If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

24.34 Notification of Limitations on Contributions.

San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (a) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (b) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (c) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Tenant understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Tenant agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Tenant with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

24.35 Vending Machine/Non-alcoholic Beverage Contract.


Tenant hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

**AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY.
THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER
ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS
LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE
COMMISSION APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE
DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.**

City and Tenant have executed this Lease as of the date first written above.

TENANT:

**Gleneagles Golf Partners, LP
a California limited partnership**

By: _____ 

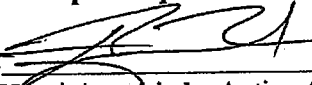
Its: _____

By: Tom A. Hsieh

Its: _____

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation**

By: _____ 

Yomi Agunbiade, Acting General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. 0411-010
ADOPTED 11/29/04**

Margaret A. McArthur
Margaret A. McArthur, Liaison to the Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Amy L. Brown

Amy Brown, Deputy City Attorney

EXHIBIT A - LEGAL DESCRIPTION OF PREMISES

All that certain real property located in San Francisco, California, described as follows:

McLaren Park Golf Course, an established 9-hole golf course approximately 3,063 yards long; bounded as follows:

Beginning at a point on the southwesterly boundary line of John McLaren Park, as said line was established by Resolution #13245 of the Board of Supervisors of the City and County of San Francisco, State of California, on April 20, 1953, said point being distant northwesterly along said boundary line 580 feet, more or less from the northwesterly line of Hahn Street:

- 1) thence from said point of beginning northwesterly along said existing fence 2200 feet, more or less to a gate at the intersection of said fence with the existing paved access road from Sunnydale Avenue to the Golf Course Clubhouse;
- 2) thence continuing northwesterly along said existing fence 80 feet, more or less to a fence line angle post, from which the most southerly corner of the existing Golf Course Clubhouse bears approximately, North 40 degrees, East 210 feet;
- 3) thence from said angle post northerly, northeasterly and easterly along said existing fence 3,100 feet more or less to a fence line angle post;
- 4) thence southeasterly 150 feet more or less along said existing fence to a fence line angle post that is approximately 40 feet northerly of the northwesterly edge of pavement of Visitacion Avenue;
- 5) thence southwesterly along said existing fence 670 feet, more or less to the northwesterly line of Francis Herz Playground;
- 6) thence continuing southwesterly along said existing fence and along said northwesterly line 650 feet more or less to the point of beginning, containing 60 acres, more or less.

EXHIBIT B - TENANT'S CAPITAL LEASEHOLD IMPROVEMENTS

Facility Improvements: Tenant will consistently upgrade the facility over the initial lease term to improve the golfing experience for all golfers and to leave the facility in better condition than at the commencement of the lease. Financing for improvements will initially come from bank loans that have already been secured. Future improvements will be made with general funds and/or loans. Tenant proposes to invest up to \$250,000 to improve the grounds, property and building over the life of the lease. The list of contemplated improvements with estimated schedule is as follows:

Year 1-2: Improve entrance, clubhouse, kitchen and patio area with paint, furniture and cosmetic improvements. The course has as many as 20-30 hanging limbs which need to be trimmed and removed. Our management group will explore adding a driving range/cage in the adjacent lot or other appropriate location.

Estimated cost of improvement: \$50,000.

Year 2-4: Review possibility of adding forward tees on holes 1, 3, 6, 9 to make the course friendly for junior and senior golfers. Lease new equipment such as mowers and golf carts.

Estimated cost of improvement: \$50,000.

Year 4-5: Based on financial feasibility studies, implement driving range at adjacent lot or other appropriate location. Purchase new TVs for clubhouse.

Estimated cost of improvement: \$50,000.

Year 6-7: Review cart path and conduct major renovation to create smoother cart paths. Review condition of parking lot and driveway and possibly repave and stripe.

Estimated cost of improvement: \$100,000.

Any request(s) by Tenant for changes in the proposed improvements or scheduling must be submitted to the General Manager in writing for approval, provided that any such request(s) do not decrease the collective financial value of the specific improvements contemplated hereinabove.

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Supervisors Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener, Yee	City elective office(s) held: Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Gleneagles Golf Partners LP	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Twohsieh LP	
Tom A. Hsieh Family Trust, dated August 24, 2004 Tom Hsieh Nicole Hsieh	
Contractor address: 851 31 st Avenue, San Francisco, CA 94121	
Date that contract was approved: June 20, 2013 – Recreation and Park Commission Res.No. 1306-009	Amount of contract: Est. \$350,000 over 9 years
Describe the nature of the contract that was approved: Responsibility for full operations and management of Gleneagles Golf Course in McLaren Park	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
 a board on which the City elective officer(s) serves _____

Print Name of Board

- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number: ()
Address:	E-mail:

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed